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July 11, 2002

Mary L. Cottrell, Secretary
Department of Telecommunications and Energy
One South Station
Boston, MA 02110

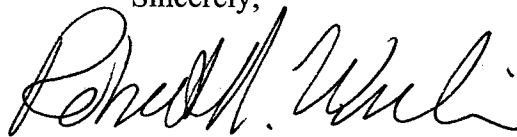
Re: Boston Edison Company, D.T.E. 01-78 (Phase II)

Dear Secretary Cottrell:

Enclosed for filing please find the Motion of Boston Edison Company d/b/a NSTAR Electric For Protective Treatment of Confidential Information. The Motion is filed in accordance with the Hearing Officer's directive, dated July 7, 2002. Also included is a Certificate of Service.

Should you have any questions concerning this matter, please do not hesitate to contact me. Thank you for your attention to this matter.

Sincerely,



Robert N. Werlin

Enclosures

cc: William Stevens, Hearing Officer
Service List

COMMONWEALTH OF MASSACHUSETTS

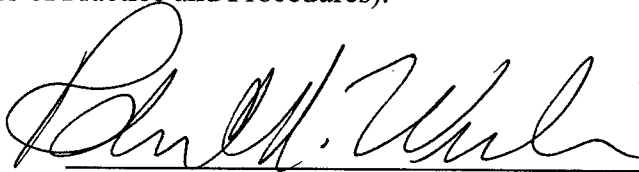
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Boston Edison Company d/b/a NSTAR Electric

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) D.T.E. 01-78 (Phase II)
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CERTIFICATE OF SERVICE

I certify that I have this day served the foregoing document upon the Department of Telecommunications and parties of record in accordance with the requirements of 220 C.M.R. 1.05 (Department's Rules of Practice and Procedures).



Robert N. Werlin, Esq.
Keegan, Werlin & Pabian, LLP
21 Custom House Street
Boston, Massachusetts 02110
(617) 951-1400

Dated: July 11, 2002

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Boston Edison Company d/b/a NSTAR Electric)
_____)

D.T.E. 01-78 (Phase II)

**MOTION OF BOSTON EDISON COMPANY D/B/A NSTAR ELECTRIC
FOR PROTECTIVE TREATMENT OF CONFIDENTIAL INFORMATION**

Boston Edison Company d/b/a NSTAR Electric (the "Company") hereby requests the Department of Telecommunications and Energy (the "Department"), pursuant to G.L. c. 25, § 5D, to grant protection from public disclosure of certain confidential, competitively sensitive and proprietary information submitted as part of the Company's request for approval of its transition cost reconciliation for the period January 1, 2001 through December 31, 2001. Specifically, the Company requests that the Department protect from public disclosure all documents submitted in response to Information Request AG-2-12, including: (1) the Power Supply Agreement executed by the Company and its supplier (the "Power Supply Agreement") (i.e., Response to Information Request AG-2-12 (Attachment 1); (2) the Request for Proposals ("RFP") wherein the Company solicited offers for electric power supply required to meet the Company's Standard Offer and Wholesale Service requirements (i.e., Response to Information Request AG-2-12 (Attachment 2); and (3) the identity of those entities targeted by the Company to procure bids (i.e., Response to Information Request AG-2-12 (Attachment 3). As discussed below, the information contained in the documents submitted in response to Information Request AG-2-12 are competitively sensitive and

its release to the public would jeopardize the integrity of future negotiations by the Company for required supply, thereby adversely affecting the Company's customers.

I. LEGAL STANDARD

Confidential information may be protected from public disclosure in accordance with G.L. c. 25, § 5D, which states in part that:

The [D]epartment may protect from public disclosure, trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings conducted pursuant to this chapter. There shall be a presumption that the information for which such protection is sought is public information and the burden shall be on the proponent of such protection to prove the need for such protection. Where the need has been found to exist, the [D]epartment shall protect only so much of the information as is necessary to meet such need.

In interpreting the statute, the Department has held that:

... [T]he burden on the company is to establish the need for protection of the information cited by the company. In determining the existence and extent of such need, the Department must consider the presumption in favor of disclosure and the specific reasons why disclosure of the disputed information benefits the public interest.

The Berkshire Electric Company et al., D.P.U. 93-187/188/189/190, at 16 (1994) as cited in Hearing Officers Ruling On the Motion of Boston Electric Company for Confidentiality, D.P.U. 96-50, at 4 (1996).

Thus, a Company must prove that: (1) the information for which protection is sought constitutes trade secrets, confidential, competitively sensitive or other proprietary information; and (2) there is a need for nondisclosure of the information. The Berkshire Gas Company, D.T.E. 01-41 at 16 (2001). Where a party proves such a need, the Department may limit the length of time that such protection is in effect. Id.

In practice, the Department has recognized that competitively sensitive terms in a competitive market should be protected and that such protection is desirable as a matter

of public policy. In fact, the Department has stated that its review process should not undermine a company's efforts to negotiate low cost flexible supply contracts for their systems. The Berkshire Gas Company et al., D.P.U 93-187/188/189/190, at 20 (1994).

The Department also has recognized that a policy of according contract confidentiality may add value to contracts and provide benefits to a company's customers, and therefore may be desirable for policy reasons. The Berkshire Gas Company, D.T.E. 01-41, at 17 (2001). Specifically, the Department has accorded protective treatment of such competitively sensitive, confidential and proprietary information as contractual pricing provisions, compensation benchmarks and bids reasoning that disclosure may affect future negotiations by either constraining the willingness of entities to offer better or more innovative terms than currently proposed or limit the future bargaining ability of a company. Id.

II. BASIS FOR CONFIDENTIALITY

The Company seeks protection from public disclosure the terms and conditions of the Power Supply Agreement and details of the RFP process (i.e., the terms of the RFP, the list of potential bidders targeted by the Company, and the name of the selected bidder) undertaken by the Company to solicit bids for needed supply. As an active participant in the electric marketplace, information relating to the Company's electric procurement needs, the solicitation of bids, the identity of potential and selected bidders, and the resultant negotiated contractual terms and conditions are information that, by its nature, are confidential, competitively sensitive, and proprietary to the Company. Public disclosure of this information has potential to cause substantial harm to the Company, particularly with respect to negotiating similar power supply agreements with other

participants in the Massachusetts electric market. In discussions with potential bidders and, in particular with the winning bidder in this case, the Company has been repeatedly informed that suppliers would be reluctant to submit bids to or execute contracts with the Company if, as a result of the transaction, the terms of the contract, including the supplier's identity, would be disclosed to the public. Thus, the lack of confidentiality may discourage suppliers from responding to an RFP or agreeing to contractual provisions that are favorable to the buyer fearing that details of the bidding process or the agreed to contractual terms could become available to competitors and place the winning bidder at a competitive disadvantage in other situations. This type of confidentiality is routinely maintained in competitive markets and is necessary to ensure aggressive bidding activity by potential suppliers in Massachusetts. The lack of aggressive bidding would be detrimental to the interests of the Company's customers in future procurements if potential bidders know that their bids, strategies and names will become available to competitors. Hence, the Company's ability to procure cost-effective resources would be compromised.¹

III. CONCLUSION

The Department has held that protective treatment of such competitively sensitive, confidential and proprietary information as contractual provisions, compensation benchmarks, and information concerning the bidding process are appropriate because disclosure may affect future negotiations by either constraining the willingness of entities to offer better or more innovative terms for supply procurement

¹ It should be noted that the public interest is not adversely affected because all relevant information has and will be provided to the Department, the Attorney General and the Division of Energy Resources for purposes of review in this and similar proceedings.

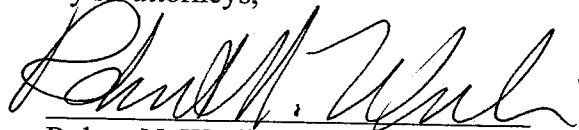
than are currently proposed, or may limit the future bargaining ability of the Company. The Berkshire Gas Company, D.T.E. 01-41 (2001) at 17. Thus, consistent with the Department's precedent, the Company seeks protection from public disclosure of documents submitted in response to Information Request AG-2-12 for a period of five years, with the opportunity to renew its request for confidential treatment for an additional period of time should disclosure from the public be warranted.

WHEREFORE, the Company respectfully requests that the Department grant its Motion for Protective Treatment as stated herein.

Respectfully Submitted,

BOSTON EDISON COMPANY
d/b/a NSTAR Electric

By its attorneys,

A handwritten signature in dark ink, appearing to read "Robert N. Werlin", is written over a horizontal line.

Robert N. Werlin
Stephen H. August
Keegan, Werlin & Pabian, LLP
21 Custom House Street
Boston, MA 02110

Dated: July 11, 2002